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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON THURSDAY, 1ST
DECEMBER, 2011 AT THE KITUI MULTIPURPOSE
DEVELOPMENT TRAINING INSTITUTE HALL**

PRESENT

Tom Ojienda	-	The Presiding Chair, Kenya
Tecla Wanjala Namachanja	-	The Acting Chair
Margaret Shava	-	Commissioner, Kenya
Ahmed Farah	-	Commissioner, Kenya

SECRETARIAT

Mr. Tom Aziz Chavangi	-	Leader of Evidence
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(The Commission commenced at 10.00 a.m.)

*(The Presiding Chair introduced himself
and other TJRC Commissioners)*

(Opening Prayers were said)

The Presiding Chair (Commissioner Ojienda): I want to welcome you to the public hearings in Kitui. We will be here today and tomorrow to hear those cases that have been selected and are representative of the statements that were recorded by the people in this region. Whenever we go to a region, we select window cases that are representative of the issues people raise. So, not all those who recorded statements will be heard. However, even if you are not heard we will ensure that your voice is heard in the final report of the Commission.

This Commission is run in accordance with certain rules that define its procedures. Witnesses are called to testify and are led in evidence by the Leader of Evidence. I urge you to respect the witnesses and their testimony even if you do not agree with them. Do not interrupt the proceedings because if you do so or make noise, you will be asked to leave the hall.

For members of the Press who are in this room, you may take photos but do not do so when witnesses are testifying. You can do so before or after their testimony. We have a total of six witnesses in the morning. We will proceed in the order that will be advised by the Leader of Evidence. The Hearing Clerk may now call the first witness.

(Ms. Patricia Mukai Mwalili took the oath)

Mr. Tom Chavangi: Please, for record purposes, tell us your names.

Ms. Patricia Mukai Mwalili: I am Patricia Mukai Mwalili. I come from Matinyani District. I am a disabled person. I am the chairperson of our group in Kitui District.

The disabled persons have problems. We are isolated at home. In my group, we are five and I am the one who is disabled. We would want to be recognized like the other children at home. We are normally isolated.

We have talked about the need for buildings to have facilities for the disabled. The physically disabled are unable to climb stairs. The buildings need to be designed well to suit the disabled also.

We are taken to normal schools and so we cannot learn well, because the other children stare at us. We get ashamed and, therefore, cannot concentrate in class. Officers from the county council harass us a lot. We would like to be exempted from paying licence fees. During the national days, we are not celebrated.

On 3rd December, 2011 we will have a day for the disabled. We know that that day will not be celebrated here in Kitui. We are ignored. There will be Paralympics games but I know we will not attend them. There is nobody who bothers about us. We are also sexually harassed. Some of us get children and the men responsible go into hiding because they do not want to be associated with us. We are isolated and discriminated against.

There are some of us who get infected with HIV/Aids. At hospital, we are asked so many questions like how we got infected. Other people ask questions such as: "Does she have a child? Does the child have legs?" There is a lot of stigma and as a result, we are not doing well.

I would like the Government to ensure that we work together with other members of the society. We need to join the others even in political matters.

Mr. Tom Chavangi: Commissioners, this is a very good witness. She has gone direct to the points. However, I have two questions for her. For how long have you been the chair of your organization?

Ms. Patricia Mukai Mwalili: I have been with the group for quite some time. Recently, I was elected the chairlady.

Mr. Tom Chavangi: Have you seen any changes that have made the lives of the disabled much better?

Ms. Patricia Mukai Mwalili: Yes, I have seen. For example, we have a national day although there are no funds. We have been having grants, but we do not know how they are disbursed. When you question, you are told that you are a bad person.

Mr. Tom Chavangi: Do you have children?

Ms. Patricia Mukai Mwalili: Yes, I have two children; a boy and a girl. My boy resides in Kampala. He is an architect. I have six grandchildren. I stay at home and I do not work.

Mr. Tom Chavangi: You can actually see that disability is not inability because you have produced an architect in this country, and you have a beautiful daughter here. You must be very proud of them.

Ms. Patricia Mukai Mwalili: I am very proud. I have my father here whom I am very proud of. Were it not for him, I would not be here. He did not hide me at home. I am a retired chief. I have also been a councillor. Thank you, Commissioners.

Mr. Tom Chavangi: I have no further questions.

The Presiding Chair (Commissioner Ojienda): Thank you, Patricia. That was very concise and to the point. You have touched on serious issues of compliance with the Disability Act, especially access to public buildings and issues of law reform.

The Acting Chair (Commissioner Namachanja): Thank you, Patricia for speaking to us on behalf of the people living with disability. You raised an issue about sexual harassment, but the translation came in as sexual embarrassment. Which one did you mean?

Ms. Patricia Mukai Mwalili: I was talking about a disabled person not wanting to be seen with a fellow disabled person, but at night he refuses to come out of the other disabled person's house. With that I mean that he or she is raped. There are many disabled persons who are not married, including myself. Why are we harassed? I meant both sexual harassment and embarrassment.

The Acting Chair (Commissioner Namachanja): Thank you.

Commissioner Farah: Thank you, Patricia for your presentation. All over the counties we have been getting presentations from people living with disabilities. The Commission is aware of most of the problems faced by people living with disabilities. We will make the appropriate recommendations. I have no questions.

Commissioner Shava: Where you work, how many facilities are there for people with special needs?

Ms. Patricia Mukai Mwalili: I know there is a school in Thika. In the first place, I do not work. I stay at home. The disabled come to my place seeking advice like where they can go to school. I take them to the DO's office for assessment. That is where they can be told where to go to school.

Commissioner Shava: I would like to make an observation. Sometimes when we are doing very important work, we are the same ones who say that we are not working. I think that what you do is important work even if nobody pays you a salary. I commend you for what you are doing. Is there anybody with whom you work who is here today?

Ms. Patricia Mukai Mwalili: I have not seen any unless they volunteer to stand up.

Commissioner Shava: I would like to commend you for coming. I thank you for your able presentation. We see a shining example in you and your family. You come from a united and enlightened family. We recognize your contribution.

Thank you.

Ms. Patricia Mukai Mwalili: Thanks.

The Presiding Chair (Commissioner Ojienda): Patricia, I want to agree with my fellow Commissioners that it is because of what your father intended for you that you are what you are today. Clearly, you have brought up your children in the same strictness in which your father brought you up. As a former administrator, I am sure you were taught all the good values in life.

The question as to whether public facilities should have access that facilitates the ingress and egress of all persons is a function of law. Unfortunately, it appears that the Disability Act has not been enforced.

Secondly, there is the question of taxes. Persons with disabilities should not pay taxes. However, I think there has not been implementation of that provision in the Disability Act. I understand where you come from when you talk of being exempted from payment of licence fees.

You have made a point on the issue of employment of persons with disabilities. We will run with that recommendation in our report. I want to thank you for your testimony. Have a good day.

I would like to know whether Patricia can use a wheel chair. We can provide that facility as a Commission.

Ms. Patricia Mukai Mwalili: I can use a tricycle because one of my arms is not working.

The Presiding Chair (Commissioner Ojienda): We will get in touch with you and see how to facilitate your movement.

Leader of Evidence, call the next witness.

(Mr. Bernard Muthungi took the oath)

Mr. Tom Chavangi: State your names for the record once again.

Mr. Bernard Muthungi: I am Bernard Mwangangi Muthungi. I am from Nzambani Location.

Mr. Tom Chavangi: Proceed with your statement.

Mr. Bernard Muthungi: In 1999, I was woken by three police officers from Kitui at my home. There was the DCIO, an OCPD and an AP. They knocked at my door and I opened it. They said that they wanted to see me. I returned to the house to put on heavy clothing because it was very cold. When I returned to the house, I met six policemen inside. They asked for a gun. I told them that I had never seen a gun since I was born. They took my radio and asked me to produce the radio permit.

I told them that I had received the radio from my daughter and if it was a matter of licence, I would give to them after sometime. They arrested me and said that I did not have a receipt for the radio. When I went into their vehicles, I got 30 policemen in three Land Rovers and one small car. I was put in the small vehicle where I found three other people inside. I was then taken to the police station. We arrived there at 6.00 a.m. in the morning. I was locked in the cells. I was booked in with the offence of possessing a radio without a license. At noon, we were called into the officer's room. We were about 30 people. I was told that I had put the house of a neighbour on fire. They also demanded to know where my gun was. I told them that I did not burn a house and I was not in possession of a gun. The day the house got burnt, I was a guest of honour raising funds for a student from Mutito, the son of Kame. I raised Ksh71, 000. We finished the function at 1.15 p.m. I left the place at 3.00 p.m. I was in the company of a journalist who also spent the night at my place. Very early in the morning, he requested that I give him Kshs150 so that he could write a report. I gave the money to him. By the time those things were being reported, I was arrested. I was taken to Syongila where I met other police officers. They told me that I had to tell them everything that I had seen about the burning of the house. I told them that I had not seen anything. They started removing my nails beginning with the centre one. You can see it from here.

(The witness showed the Commissioners his scars)

The one on my leg is not even fully healed. They removed all the nails. They tied my private parts and suspended them on the roof. I was suspended using a long rope. They kicked me as I turned round and round. They kicked me until I became unconscious. As you can see, I am using only two fingers. The people who could not accept what they were being questioned about were released and then they were made to be witnesses. For me, I did not say anything because I did not know anything. Even up to now, my private parts are not good. Until now I take multi-vitamins and capsules, I cannot meet my wife. One of my wives ran away because she found out that I was not a man. She ran away and left the children with me.

Later on, we were taken at Embu Police Station. There were people waiting for us at Embu. I was then beaten ruthlessly. I had never seen anything like that. Those people kicked me in the back and I think I need medical attention. The District Criminal Investigation Officer (DCIO) from Embu was in charge of all those things. I was 55 years old then. I was told to jump and touch the roof. When I failed to touch the roof, I was beaten ruthlessly. I fell down and they continued beating me. I was then sent to remand but the people in the remand did not accept me. They said that they did not want anybody to die while there because they would be accused of murder. I was taken to the reporting area where I found a lady. Upon seeing me, she started crying. She took me to the Officer Commanding Station (OCS). She told him that I had been beaten and I was hungry. She requested that I be given some food and medication or I might die. I was given rice, tea and half a loaf of bread. We were taken to court in Embu. That is when the beating stopped. I spent three months there. We were later on released and arrested again. We were arrested by the Flying Squad. Once again we were taken back to Embu Police Station, where we stayed for six days. They came for us and took us to Milimani Police Station. We found our accuser there and he ordered that we should not be given any food even if we had money. We were taken to Kibera Law Courts but they refused to admit us. They said that we had been there and taken away so our case should be handled from where we had gone. Then we were taken to Nairobi High Court. We were then charged. That case took two years and 13 days. We went to attend court sessions for 96 days. Other people died during the case and others hurt their legs. On 25th July, 2001 I was released. I was told that I had no case to answer. They told us that if we wanted to open another case on the police, we could do so. The DCIO from Kitui was invited and asked whether investigations had been done but he said that he did not carry out any investigations. The DCIO from Embu was also called and asked the same. He also said that investigations had been done in Kitui. The Flying Squad was also asked about investigations and they also said that they did not do it. So, they were told that their work was not properly done and yet they had arrested people.

They had sentenced us to death or for life imprisonment. When it was found that they had not done proper investigations, they were asked the procedure they had used. They said that they thought that investigations had been done elsewhere by the other policemen.

I was beaten in the police custody and up to now, I walk using a stick. I lost three fingers and I also lost my manhood. I cannot function unless I take capsules and multi-vitamins which cost Ksh2, 400 and last for two weeks. These things have destroyed my family and my name. I stayed in custody for 24 months and when I was released, I was never compensated. I had a lot of money then. I had about Ksh80, 000 when I returned. But when I was arrested, I had about Ksh1, 286, 000. All that money was spent as they were looking after me in Kamiti. My children dropped out of school. There is Daniel Mwangangi, Mulinge Mwangangi, Tabitha and Lenah. It is only recently that I held a fundraising for them. The fundraising was presided over by Hon. Charity Ngilu. They are now in school. That is all I have to say.

Mr. Tom Chavangi: Thank you very much. Let me seek some clarification. Did you say the police came at night?

Mr. Bernard Mwangangi: They came at 4.00 a.m.

Mr. Tom Chavangi: You were taken to Embu and then to Nairobi?

Mr. Bernard Mwangangi: Yes.

Mr. Tom Chavangi: Is it possible to get the case numbers for the case in Embu and Nairobi?

Mr. Bernard Mwangangi: Yes, I can get them.

Mr. Tom Chavangi: For further investigations, it would be good for us to have the case numbers.

Mr. Bernard Mwangangi: I will get them for you. For the case in Nairobi, we had a lawyer who will give us the number.

Mr. Tom Chavangi: Who was the lawyer?

Mr. Bernard Mwangangi: He was called Githinji. There is somebody whom we were arrested with and he is called Peter Wambua. I have seen him behind there and I think he might be having the numbers for the cases.

The Presiding Chair (Commissioner Ojienda): We can continue with the witness and if there are any documents they can be handed in later.

Mr. Tom Chavangi: I will continue to ask you some questions. Do you have children and how old is your last born.

Mr. Bernard Mwangangi: I have seven children and the last born was born in 1983. The first born was born in 1971.

Mr. Tom Chavangi: Were you in possession of that gun?

Mr. Bernard Mwangangi: No.

Mr. Tom Chavangi: Thank you very much.

The Acting Chair (Commissioner Namachanja): Thank you very much, Mr. Mwangangi for coming to help us and the public to understand the issue of torture. These are words that we have read in books and newspapers but when someone hears what you have said, then we can understand what it means to be tortured. For example, you lost your manhood and you are now disabled. You were also dehumanized and treated like an animal. That is what you went through in the hands of our security people. We are very

sorry for what you went through. I just have two questions: Did you know Mr. Mutua Mbuvi before the incident?

Mr. Bernard Mwangangi: Mr. Mutua Mbuvi is my friend.

The Acting Chair (Commissioner Namachanja): Was he also a businessman?

Mr. Bernard Mwangangi: He used to work in Mombasa. He is my neighbour at home.

The Acting Chair (Commissioner Namachanja): If you suspect that you were framed, why do you think that you were the first suspect when his house got burnt?

Mr. Bernard Mwangangi: The person who suspected me was called Ndunda. Ndunda is the one who went to the police. He said that my son was a police officer and so I was in possession of a gun. All those were lies.

The Acting Chair (Commissioner Namachanja): Just because your sons were policemen, you were suspected?

Mr. Bernard Mwangangi: Yes. They also checked to find out whether they had their guns.

The Acting Chair (Commissioner Namachanja): Tell us more about your sons losing jobs and the issue of guns.

Mr. Bernard Mwangangi: My son was working with the Army. He was suspended so that they could investigate whether he had lost a gun. They investigated and found that he had never lost a gun even once. But, later on, they reinstated him.

The Acting Chair (Commissioner Namachanja): You have said that at the time when the house was burnt, there is a journalist who had attended a fundraising meeting and that he had slept in your house. Was he called to witness?

Mr. Bernard Mwangangi: He was not called to be a witness. He only wrote in the newspaper and that became evidence. Other evidence includes the books where we were recording names of those who had attended the *harambee*. We had started at 8.00 a.m. and were through by 1.15 p.m. All those documents were brought to court.

The Acting Chair (Commissioner Namachanja): Were the criminals who burnt Mutua's house found?

Mr. Bernard Mwangangi: I did not hear anybody confess to have committed that crime. Among those who were in Kamiti, nobody had committed the crime.

Commissioner Farah: Bernard Mwangangi, were you ever sentenced to prison?

Mr. Bernard Mwangangi: I was sentenced for stealing a cow. I bought a cow from the market and I was accused of stealing it. I was fined and released. I was a businessman here at Kitui and people know me. I used to work as a slaughter man.

Commissioner Farah: Apart from the time in remand, was there any sentence passed by the court? In the case where it was alleged that you were in possession of a gun, were you ever sentenced?

Mr. Bernard Mwangangi: No.

Commissioner Farah: Being in remand for all that time, what was the outcome of the case?

Mr. Bernard Mwangangi: It is Ndunda who was saying that I had a gun. When I was taken to court, I was prosecuted together with other 40 people. When they investigated and found that I was not in possession of a gun, I was released.

Commissioner Farah: How long did you stay in prison?

Mr. Bernard Mwangangi: I stayed in the remand for two years and 13 days.

Commissioner Shava: Mr. Mwangangi, I would like to add to what my fellow Commissioners have said about what you underwent. That amounts to cruel, inhuman and degrading treatment. We are very sorry for what you underwent. We will do what we can, especially when you give the court documents. We shall see how we shall follow up your case and make appropriate recommendations. This Commission has the power to make recommendations regarding investigations and prosecutions of individuals.

So, we will be doing what we can to ensure that we use those powers to assist you. I have no question for you. I would just like to ask you if there are any of your colleagues, with whom you were incarcerated in the course of this case. Could you ask them to stand so that we can recognise them?

Mr. Bernard Mwangangi: I had seen one person here. He was beaten in that place. He was castrated. He is called Peter Wambua.

(Mr. Peter Wambua stood up in his place)

Commissioner Shava: Thank you very much, Mr. Wambua. We recognise you. I have no further questions.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Mr. Mwangangi. I also want to join my fellow Commissioners in expressing a deep sense of shock and pain at the experience that you went through – the horrid tale that you have told this Commission just to demonstrate how shoddy investigations resulted in the violation of rights of people. I want to just request you to avail to the Commission the court

proceedings so that we can make findings that will be based on investigations. By “investigations”, I mean complete investigations.

I want to ask you a few questions. What was happening around this area in 1999 that led to your arrest, that of Peter and others? Was it just the burning of the house of Mr. Mbuvi or there were other things that were going on?

Mr. Bernard Mwangangi: That person said that his house was torched and that he was robbed of Ksh500, 000, which was not seen with anybody.

The Presiding Chair (Commissioner Ojienda): So, you were charged with robbery with violence?

Mr. Bernard Mwangangi: We were prosecuted for stealing and torching a house.

The Presiding Chair (Commissioner Ojienda): From what you say, if you had a gun, as they claimed, and if they said that money had been stolen from a house, definitely, under the law, the offence would have been robbery with violence. Were you granted bail or did you defend yourselves while in custody for the two years?

Mr. Bernard Mwangangi: Pardon?

The Presiding Chair (Commissioner Ojienda): Did you apply for a bond or bail during the trial and was it granted?

Mr. Bernard Mwangangi: No, we were not given any cash bail. It was called “robbery with violence” and it was not bailable.

The Presiding Chair (Commissioner Ojienda): I want to understand. Was the torture that you went through meted out upon you and your colleagues while you were in the cells?

Mr. Bernard Mwangangi: Yes.

The Presiding Chair (Commissioner Ojienda): In which particular cell?

Mr. Bernard Mwangangi: I was held in custody here in Kitui for one day. I was then taken to Embu where I stayed in custody for two weeks.

The Presiding Chair (Commissioner Ojienda): Do you know the names of the officers who tortured you?

Mr. Bernard Mwangangi: Those who arrested me at that time?

The Presiding Chair (Commissioner Ojienda): The names of those who tortured you and caused you to lose your three fingers and your manhood.

Mr. Bernard Mwangangi: It was the DCIO, Kitui, and the DCIO, Embu. The Flying Squad officers did not beat us but they denied us food.

The Presiding Chair (Commissioner Ojienda): Mr. Mwangangi, I feel sad that this country has come from a history where once a person was arrested, his rights were thrown out of the window. A person would be tortured; information, be it true or false, would be extracted from him and he would eventually be tried in court. Even though you were acquitted, the result that we see in you and Peter is disability. Gladly, we have a new Constitution. Those are things that should never happen to any person because accused persons must retain their respect. They must not be tortured. They must be protected by the law. We will make recommendations. Thank you.

Leader of Evidence, call the next witness.

Mr. Tom Chavangi: Presiding Chair, our next witness is Witness No.1, Benedict Mwendwa Muli, who is representing the Kamba Council of Elders.

The Presiding Chair (Commissioner Ojienda): Proceed, counsel.

(Mr. Benedict Mwendwa Muli took the oath)

Mr. Tom Chavangi: For the record, Benedict, state your names again.

Mr. Benedict Mwendwa Muli: My names are Benedict Mwendwa Muli. I am here to present a memorandum to the Commission on behalf of the Akamba Council of Elders.

Mr. Tom Chavangi: What are you in the Council of Elders?

Mr. Benedict Mwendwa Muli: I am the treasurer of the Akamba Council of Elders.

Mr. Tom Chavangi: The memo that you have presented before the Commission has been read thoroughly by the commissioners. If you look at it, it summarises four issues relating to land, administration of justice, poverty and drugs. Kindly, proceed and present the memo based on the four issues that you and me have identified.

Mr. Benedict Mwendwa Muli: Firstly, I would like to say that the Akamba Council of Elders is a community society which was registered in 2004 and inaugurated in 2005, and the guest of honour was the District Commissioner, Mr. Abdi Hassan.

The objects of the Akamba Council of Elders are to oversee good governance at all levels, sectors and family discipline, promotion of customary laws and cultural values that discourage violation of human rights of individuals and the rule of law, co-operation amongst members and other societies, consultation and conflict resolution in our community, cohesion and collaboration with other development bodies to enable the council to run other activities. We are not a political body and are non-profit-making.

I would now like to look into our main agenda, which is about land and injustice. We mostly focus on Kitui County. In Kitui County, we have two councils. One is the County Council of Kitui and the other one is the Municipal Council of Kitui. These councils, in accordance with the law, are entrusted by the Commissioner of Lands with agency for land. For that matter, they are responsible for land allocation. In our Government, we have three arms of governance. We know that there is the Executive, the Legislature and the Judiciary. However, looking at them, it looks as if they have neglected their duties. As a result, most of the communities and citizens have been divided into two tribes. We know that we have 42 tribes but today we have the rich tribe and the poor tribe. After the promulgation of our new Constitution, our people started to understand that they have a right to know what is happening and that they also have a right to claim their rights. About land injustices in Kitui County, taking an example of the land in Kitui Town and the municipality, it was said to be Government land since the colonial period. It has already been changed to private land by way of grabbing. This can be seen from the vicinity of the DC's offices and the surrounding areas. It is surprising to see that next to the DC's residence is a civilian. Those areas have been grabbed by private developers.

The hospital grounds, the prison grounds and where the AP Camp is located, including Government forests, have all gone. What is more surprising is the fact that in Kitui County and Kitui Town, we have no stadium. All the spaces in town have been grabbed. These include the river reservoirs. There is no sewerage treatment plant. There are no paths. There is not even an open space. If you take time and go through the physical plan of the 1970s and earlier, you will see the difference. If you look at the buildings in the central district, you will find that there are not even fire breakers. If fire starts in the first shop on the first line, it will burn all the buildings on that line up to the last one. Kitui County Council has even gone to areas where land was set aside for animal welfare, commercial ranching and wildlife conservation. These are Mwakini Nduyu Ranch, Kanyonyo Ranch and Katuteni Ranch.

Let us look at Mwakini Ranch. Those three are examples and they have all been taken away. I have a better option. Instead of people running to Mwakini, Katuteni and those other places and destroying that land for their own selfish needs, we suggest that since Kitui County lies on ASAL lands, and wrong land use affects the fragile ecosystem, and given that from the colonial days, these places were set aside for ranching, game parks and other less land-degrading ventures--- My suggestion is to guide Kitui County Council on this delicate issue. Once Katuteni Ranch goes to individuals, it will be the end of the alternative use of the land and the allottees will start receiving famine relief from the outset due to lack of rains. The land is not meant for that kind of use. The new thinking to make this country a tourist destination of choice is not a far-fetched illusion; we have seen both the President and the Minister for Tourism criss-cross the world, luring tourists to visit our country and by extension, our beautiful game parks.

If it is converted into a game park or wildlife sanctuary, Katuteni Ranch will be an economic spring board for this county and the country at large. The road network from Nairobi and northern Kenya is good. The Kibwezi-Kitui Road will soon be built to

bitumen standard. Institutions of higher learning have been located next to it; Kenyatta University Campus at Kwa Vonza, SEUCO at Ukai and Nyumbani Village are nearby. In addition to schools and other institutions, Kitui County will attract domestic tourism. This will be a must. Visiting places with species of wildlife will be introduced in the area, in addition to what we have.

Before I speak on other solutions, I would like to speak about drug abuse. It has been noticed that this has reached menacing levels. The Government of the day understands this. Those involved are known. What can we do? Our children are being ruined as we watch. The sons and daughters of the drug barons are getting education abroad. Our children simply go to local schools. Our local schools are targeted by the drug barons. What are we going to do? Can we have an advisory body and try to see how we can help our children? How can we do away with these people? Is it that we change the Government or what shall we do? Those who are in this include senior people in our Government. They are the same people fighting for political position, so that they may defend their properties that they have grabbed and the illegal business they do.

We are also affected by the high cost of living. When I go through the history of this country, I happen to come across a change that was made in 1970 by a commission known as “the Ndegwa Commission”. That Commission allowed all civil servants and politicians to engage in business that could create ten jobs, instead of sticking to the one-man, one-job policy. If you look at the procurement system in Government, you will see that it is obvious that all the tenders are awarded by spouses and accomplices to people with whom they do business. That is obvious. It is well known by everyone. The question is: What shall we do to reconcile these interests? Is it justice to kneel down and pray to God, like your neighbour, on an empty stomach?

The ones who are suffering are not even the 70 per cent we keeping on talking about. The people living below the poverty line in this country are 90 per cent. That is well known. The question is: What shall we do? I have a solution. Can land grabbing within Kitui County Council and Kitui Municipal Council, including Katutuni area, Mwakini Nduyu Ranch and other places, be properly investigated? There should be comparison of the Physical Plan of 1986 with what we have on the ground today so as to get the true picture of the situation. Is it possible for those who are involved in land grabbing to face the law? If found guilty, can they surrender all this land together with the titles they have back to the State so that every *mwananchi* can be more or less equal to the other? It shows the level of impunity that this country has reached. Those who grabbed public land are very rich. Those who did not have an opportunity to grab land are totally different. Is it justifiable to have the two live together, or have the poor and the rich go to one bed? Is it really humane?

I will end my speech at this point. It is the responsibility of the Chair to look into my memorandum. I know that what we have been deliberating on does not affect only Kitui County. It even affects the place from which the Chair comes. It is a disease in Kenya. The ball is now in the TJRC court for you to see if the elders will be involved in most of the matters relating to land and conflicts. This will bring some peace in the country.

Everyone hopes for the best. The truth will remain that the elders who are here today will go where they are supposed to go. What will be the future of the younger generation? Just look at that picture. Thank you very much.

Mr. Tom Chavangi: Thank you, Benedict, for appreciating the fact that land issues are national issues. You have a supplementary memo. Would you want to present it before the Commission?

Mr. Benedict Mwendwa Muli: Yes.

Mr. Chavangi: Presiding Chair, the witness has attached some minutes of a joint meeting with the District Commissioner on issues of land, and another letter to the Ministry of Co-operatives Development and Marketing on the issue of land, another letter to the same Ministry and a letter from M/s Musyoka Wambua Advocates, who are handling the issue. I would like those documents to be admitted as exhibits by this Commission.

The Presiding Chair (Commissioner Ojienda): They are ordered admitted.

Mr. Tom Chavangi: Thank you, Presiding Chair. I have no questions for this witness.

Mr. Benedict Mwendwa Muli: In addition, I presented minutes of a meeting of the DDC.

Mr. Tom Chavangi: Presiding Chair, the minutes are here with us.

Mr. Benedict Mwendwa Muli: I have also presented minutes of a meeting of the county council.

The Presiding Chair (Commissioner Ojienda): Thank you very much for that presentation.

The Acting Chair (Commissioner Namachanja): Mr. Muli, thank you very much for sharing with us the concerns of the elders from this region and the recommendations. I would like you to reflect on the coming 2012 elections, especially at the county-level. What are the elders doing to ensure that these elections will be peaceful? Do you have any fears concerning the 2012 elections?

Mr. Benedict Mwendwa Muli: We, in this county, and especially members of the Kamba community, are not violent. You can reflect back to 2007. However, you cannot trust politicians. We, as elders, have been holding some meetings and seminars with the clergy, the youth, women and other members of society. We have always been asking them to compare themselves with other areas where there was post-election violence in terms of how people were tortured and how they were burnt. People in those areas suffered a lot. We saw our Government almost collapsing. We could have run out of Government. We could also go the Somalia way. I have decided to compare our situation

with that of the Somali Government, which was not in place for 20 years. There is no life in Somalia. There is only death. When we compare ourselves with such a scenario, we see that is the worst thing that can ever happen.

Who wishes to die mysteriously in our community? There is nobody. We would wish to have a peaceful election. We would also wish to give advice. Today, we are allowed by the Constitution to look at leaders to establish whether one is a selfish person who is looking for leadership to fulfil his selfish interests. Is he a person with good qualities of leadership who can set a good example? That is our question. Let elders be allowed to vet the politicians to see the kind of characters they are and their integrity. If politicians go through such a process, we will have better leaders.

The Acting Chair (Commissioner Namachanja): Thank you so much for that advice. You also mentioned the issue of drugs. What suggestions do you have? That problem does not affect this area alone. It affects many other parts of Kenya.

Mr. Benedict Mwendwa Muli: Earlier on, I said that the Government of the day is totally neglecting the rule of law. When a child makes a mistake in front of the father and the mother, the parents always take a whip and warn that child. They use all kinds of methods to have the child rehabilitated. Why is it that the Government of the day knows the drug barons and the peddlers, but no arrests have been made, or any legal process initiated? The barons and peddlers are only encouraged to go on with business and given opportunity to seek political positions. When they become Members of Parliament, they alter the laws. What has been published in today's newspaper is a very good example. When a court rules that so-and-so should be arrested, the other office in the same building orders that that person should not be arrested. Where are we going? What does that scenario reflect?

They talk about that but what about a child or the one who is on the ground? How will it be taken by those ones who do not know the rule of law? They will be saying that even if I do this and that, what will you do? The question lies with those who are given an opportunity to discuss the same. I would say that let us all join together and say "no". Whoever is at the top and does not want to execute his duties, at the time of appointing, let us not appoint them. We will get very fresh and clean working people in a working nation.

The Acting Chair (Commissioner Namachanja): Thank you, Sir.

Commissioner Farah: Thank you very much, Mr. Muli, for your good presentation. I only have a few clarifications to seek. In your analysis of the price increases of basic essential commodities, you have mentioned that it was the Ndegwa Commission which allowed civil servants and everybody else to go into business. That is the cause of all problems. Your explanation was not clear. Did you analyze all other issues that affect the price increases as opposed to the Ndegwa Commission alone?

Mr. Benedict Mwendwa Muli: To elaborate on that, the Ndegwa Commission was commissioned in 1970. The report indicated that every person is free to do business. Take your mind back and I think it was the time you were working. The kind of persons who were working at that time and had the capacity to set up a business were the people in the cluster of Ministers, Permanent Secretaries, District Commissioners (DCs) and all those cadres. Those people had the capacity to order and take orders from the Ministries so that they could do other kinds of business. They did import and export business because they could easily get licences. They could award themselves licences to do that business and as a result, they could also seek political powers so that they could defend their business. Look at Parliament now. This parliamentarian owns a shamba of about 2,000 acres. He keeps dairy cattle and produces milk. He takes that milk to other societies for packing and other by-products. That same person is the highest shareholder of the same company and if I am not mistaken, he might be the chairman of the same firm. Here is a lawmaker who is a producer and farmer. Look at the scenario now; from the farm to the factory and then the lawmaker. By making the products, he is also the man in charge of transportation. If you come to the village, he owns that supermarket and wholesale business. How will you prevent that man from putting price controls on the same product? It is obvious that he would need the highest profit. So, when he goes to Parliament and a Bill is brought to control prices, it is obvious that he is going to shoot it down.

Our suggestion, as elders, is that if you are doing one job, you should not practice the other. If you are a lawyer today and a chairman of the Law Society of Kenya, I think when you go to practice in court, those who are holding other positions will never be fairly treated because you might even collaborate with the judges so that you win the cases and get more clients. Just look at that. That does not apply only to the lawyers. Today, we have problems. One of the people who are the most corrupt is a politician. The other ones are lawyers because they are ready to defend a thief or any kind of characters provided he gets his income. These are the kind of people we would wish, if anything can be done, to ensure that they practice one job.

These price controls should not be discussed by Members of Parliament. I think the consumers are in a better position to discuss about the hike in prices better than a lawyer or a Member of Parliament.

Commissioner Farah: Thank you very much. I think our Presiding Chair has taken note. Now, this dreaded animals called drug dealers and peddlers, what solution do you offer?

Mr. Benedict Mwendwa Muli: I would suggest that we should first observe the way information goes to them. Allow me to give a very small example. Here is a peddler moving his consignment of bhang from Isebania. He packs it in a car and then drives all the way past Kisii and somebody tips the police at Nakuru. A roadblock is set so that they net the peddler. As he arrives in Nakuru, it is obvious that the police are ready. But beyond doing their job, they have other interests. When the fellow is netted, his vehicle is offloaded and they might find about 1,000 packets or rolls of bhang. Instead of driving back this transporter so that they investigate where he got them from, these policemen invite the media by the roadside so that they may speak of their achievements. The officer

in charge will say that his men have worked effectively and netted the bhang and that the value of the same consignment is Ksh5 million, for example. This consignment has not yet reached where it was going and the recipient is still waiting. Instead of the recipient---

The Presiding Chair (Commissioner Ojienda): Mr. Mwendwa, I think your answer is very clear. I wish you could give brief answers. This Commission will act by way of recommendations and we want short and sharp recommendations and not long winding serpentine stories.

Thank you.

Mr. Benedict Mwendwa Muli: I just want to say that before they take any action, they should not invite the media. They should do it secretly so that they may net both sides, that is, the recipient and the seller. That is one way.

Also, the media encourages our youth. If a consignment of two bags is said to be worth Ksh5 million, it is obvious that the youth here will say: "I will also get mine because two bags are worth Ksh5 million." The Government should act seriously on penalties without being selective. Regardless of who you are, let the arm of the law land on you.

Commissioner Farah: Thank you very much. I think you have been very eloquent. As the leader of the elders in Kitui, I think all the issues are rightly in your hands. I only wish you luck, as the counties come up, for you to start taming the politicians in Kitui County so that they follow the law for the benefit of the greater public of Kitui County. Thank you very much.

Commissioner Shava: Mr. Muli, unfortunately, I missed the large part of your presentation as I had to step out. But I would like to thank you for coming here to represent your people as an elder. Having had the benefit of reading your statements, the main problem affecting people in this area has to do with land. How do these land issues affect women, perhaps touching on issues to do with inheritance, women's traditional rights to own or not to own property? How does this impact on the family unit?

Mr. Benedict Mwendwa Muli: As I said earlier, the Kamba community is not all that harsh in terms of inheritance. When an elder dies and had about three to four wives, his property and land is shared among the four wives and there is no dispute about that. That is because once you are married you are automatically given your household and that depends on you and your children. When the husband is gone, then there will be no dispute. Just in case of rare cases where some of us are greedy, the brother-in-laws may invade that house and chase away the woman so that they may inherit the land and wealth, but that is mostly looked into by the elders and the clan members. Where they cannot manage, they rush to court. But going to court is not a solution. We would encourage the formation of some committees of elders to solve those matters. After all, they know the family better, the sizes of the land and how that land was acquired. We can have a way of solving such problems.

Commissioner Shava: Thank you, Mr. Muli. Leading on from your example of a man dying and leaving behind three wives, if one wife had three daughters and some or all of whom were married, and another wife had three sons, some or all of whom were married, how would your council look at the inheritance rights of those two set of children?

Mr. Benedict Mwendwa Muli: That is a very good observation. As I said earlier, every household depends on what has been given by the husband. But this unfortunate *mama* who has no sons and had daughters who are married, the consent remains with her. She might need to adopt a son from the other house and have consultations with her daughters who are married elsewhere. As a community, we have no dispute about that because the property is inherited by the wife and not daughters or sons. The wife will be inherited by her own children. That is in line with the Kamba community. Otherwise, those who are not satisfied with the process can end up in law courts.

Commissioner Shava: Thank you, *Mzee* Muli. What I understood you to be saying is that were this *mama* who had daughters to die, it would be clear to the council of elders that her three daughters would have the right to inherit her land if that was her wish. Is that what you are saying?

Mr. Mwendwa Muli: I am trying to say that they have an upper hand for consultations, although the boys and other people within their family might raise issues. They might say that since they are married, they should not come back home, and a fight might erupt. But the final word of the *mama* is what should be followed.

Commissioner Shava: I am happy to hear you say that, although I felt a bit uncomfortable when you were talking about adopting boys from the other family. But I am also happy to note that that is now water under the bridge because of the provisions of the new Constitution. The issue of girls getting married and then the community viewing it as if it is a man from somewhere else who is inheriting the property of their parents will no longer be an issue. The Constitution has defined that everyone can inherit the property of the parents.

I will just conclude by making an observation as a lawyer. I recognize that the legal profession just as many other professions in Kenya has been guilty in the past in this country of failing to live up to the expectations with regard to professional conduct. However, I would also like to note that it is not the work of lawyers to determine guilt or innocence. That is the work of the courts. The rules of natural justice and defence of human rights dictate that both sides should be heard before the court comes to a determination. We may sit here and think that somebody is a thief but we do not know that until the court has determined it. The person so accused also has the right to be heard and the right to legal counsel.

Thank you for coming today.

Mr. Benedict Mwendwa Muli: Where adoption is concerned in that family, it is mostly guided by the poverty level. Here is a *mama* with no boy and her co-wife has a boy who

is wealthy and can take care of the disadvantaged *mama* as she ages. At times, the *mama* can say: "I will give you this piece of land so that you take care of me until I die." So, this young man will take care of his own household together with the father's house. That is the way of living of an African wife. When this *mama* dies, because this one has been taking care of her, even elders will agree with him that he has a right to take up the house of that *mama*. That is what I meant.

Commissioner Shava: Thank you very much for that clarification. But why would the girls not look after their mother? Is it because they have been disadvantaged in terms of education? Why would this woman disinherit her own children for the purpose of having someone to look after her?

Mr. Benedict Mwendwa Muli: It is as a result of the poverty level. It is very obvious that daughters are friendlier to their parents than boys. If it happens that this *mama* is not getting enough from the daughters, it means that those daughters are not well off even where they are married. As you know, love has no choice. Everyone would like to be married by a rich person, but unfortunately, if you land with a poor one and you manage your love with him, that is God-given. So, life shall also continue in whatever situation it is.

Commissioner Shava: Thank you very much, *Mzee*. I look forward to the day I will hear you recommending that a daughter should be adopted by a male family, because she is the one who is wealthy and will help the males come out of their poverty.

Thank you.

The Presiding Chair (Commissioner Ojienda): Mr. Muli, thank you very much for your testimony. I have learnt of your fear of lawyers and politicians through your testimony. You have made a number of recommendations. As a lawyer and former Chairman of the Law Society of Kenya, I thought that you were speaking to me because I still practice law. But I just want to confirm to you that society and the law are synonymous and one cannot exist without the other. We are here because of the law and lawyers are defenders of society. They stand between society, courts and justice. I would almost say that they are a necessary evil in society, if at all. They are the link in society and also social engineers. As I said, we are the cause of law and lawyers, for without law and lawyers in society, there can only be anarchy. For those of you who did not live in this area during the post election violence where there was breakdown of law, I tell you that the need for law would have been more obvious. So, the law and even those thieves that you have talked about--- The branded thieves and accused persons are not criminals unless convicted through the legal process. That is why lawyers exist. The state and all those branches of Government that you have noted are a creation of law. So, it is the law first and then Mr. Muli next.

Thank you for your testimony and the stewardship that you have continued to give to the Kamba Council of Elders. We will make appropriate recommendations on the land question. Chapter 5 of the Constitution of Kenya 2010 recognizes a number of sets of

land and community land is one of them. Land that is illegally acquired is not protected by the law. So, your memorandum will find place in our report. We will do investigations on the ranches. I have seen the politicians that are involved and the allotments and we will make recommendations on the cancellation of those titles and the return of the land to the community. Thank you very much.
Leader of evidence call the next witness.

Mr. Mwendwa Muli: I would like to say thank you very much because I am speaking to the right person. I did not know that you were the Chairman of the LSK at one time. I am happy for the reception and courtesy. I know that if we continue like this, every Kenyan shall be happy. I wish you the best when you are compiling your report. The only problem is that we cannot tell who is the right lawyer or politician, but the actions will show. Those lawyers who can deliver are a certain percentage.

When you were the Chairman, you did well. Even today we hear of you. What you speak is really for the people and not lawyers. We are happy for that.
Thank you so much.

The Presiding Chair (Commissioner Ojienda): Thank you very much. Have a good day.

Mr. Patrick Njue: Presiding Chair and Commissioners, for the record there is a change of guard at the desk of the Leader of Evidence. Patrick Mureithi Njue steps in for Tom Chavangi.

The Presiding Chair (Commissioner Ojienda): Welcome Mr. Mureithi. Call the next witness.

Mr. Patrick Njue: Our next witness is number 3 on our cause list.

(Mr. Josphat Manase Kasina took the oath)

Good afternoon, Sir!

Mr. Josphat Manase Kasina: Good afternoon to you.

Mr. Patrick Njue: Kindly for the record, do once again state your names, where you come from and what you do for a living.

Mr. Josphat Manase Kasina: I am Josphat Manase Kasina. I come from Kitui Central District, Kitui County. I work with a civil society organization, Kitui Paralegal Project, which is under the umbrella of the International Commission of Jurists (ICJ). It is the Kenyan section of the ICJ. I work as a paralegal officer. In the children's department, I am a VCO (Voluntary Children's Officer). Also, I am the Executive Secretary of *Jukwa la Katiba* in Kitui County.

I would like to note the following violations that are found and also practiced under different categories of children abuse. First I want to highlight these categories. They are: Child labour, illiteracy, sexual abuse, cultural practices, child neglect, child trafficking and at times, commercial sex practice. I will be very brief.

About child labour, under the Convention on Children that took place in 1990 at the United Nations on the children's rights, it elaborates very clearly that all those people who are under 18 years old are all children despite their sex. Child labour is one of the violations which the children undergo. That is very harmful to the children. Despite it being done because of poverty, at times, the parents and also the Government do not take care of their responsibilities. Kenya is one of the signatories to that treaty.

The other one is illiteracy. So many children do not go to school. The Government says that there is free and compulsory education but it seems that they are not very much committed in that field.

The girl-child is among other children who suffer. This is because this will force the girl-child to engage in evil activities. This practice also has been noted. At the end of the day, this child will become an expectant mother before she is ready.

The other one is child abuse whereby we have rape cases, child defilement, indecent behaviour towards children and sodomy. For example, there was an incident which occurred in Nakuru whereby a seven-year-old girl was defiled. I do not think any action was taken by the Government.

In Kitui, we have so many cases of rape, defilement and also sodomy which are in court. These are the evils which, if you visit a police station, court or the children's department, you will on a daily basis.

The major perpetrators of these crimes are the parents of these children, relatives, employees and some personalities of high standing in society. We have cultural practices like FGM. This is practiced, but in very few cases. We have also unexpected pregnancies and early marriages whereby the girls are married with conditions. Probably, the person who committed the crime might be somebody who is working. So, he tends to marry the girl to cover up what he did or to avoid the rule of law, which is also wrong. This is well known.

We have child neglect whereby the child might have parents but since the parents have domestic issues, they end up neglecting the child, who suffers a lot. This makes the child run away from home. If it is a girl, she goes to get married or become a commercial sex worker. These children end up not going to school.

We have drug abuse. Here in Kitui we have shelters whereby miraa and other drugs are sold. They are given directions on who should use this one, but this one does not help. You will find that a lot of school children are using these drugs, and also the youth. This is behind the political arm.

One day when we went to this place where these drugs were sold, we got a lot of challenges. At the end, we were forced to withdraw because it seemed there was someone powerful behind it. This has become an income generating activity for children. This alienates the parents from their children because at the end of the day these children were using drugs and they will never support anybody, even themselves.

I want to make my recommendations. I have said all the above malpractices done to the child affect its total development. This has been noted in several world children's conventions like the UNHCR of 1990 and also the UN Charter and the OAU. All these are very well explained in the present Children's Rights Act and Article 53 under the Constitution of Kenya.

I observed that, either the community lacks understanding or they are ignorant of the law. I would ask that if the Government can involve itself seriously because these abuses are happening very openly, to educate the community on the impact of these things, probably, our future generation will be better off.

I want to give an example of one of the days when I visited the police cells. I was there for several hours. I was surprised because I found two young boys who had been locked in there. Since I am an area advisory counsel in the Children's Department, I raised this issue when we had our general meeting.

I want to give my observation that I pray that the Government establishes remand homes and police cells whereby these children should be locked in if they commit a crime. Otherwise to lock these children in ordinary cells with grown-ups will never help. Instead it will make the child to become a deviant. At the end of the day, the child will be bad.

The Judiciary and the police are also involved in issues to do with the rights of the child. I would recommend that when a case is reported at the police station and is taken to court, it should be handled immediately. The verdict must be given quickly because justice delayed is justice denied.

Finally, I want to thank those police officers who were in the police station. I would also like to thank the Children's Department and the civil society organizations which deal with children's rights because it has changed now from what it used to be. Honestly, I want to thank all of them. I pray for them to continue with the same and they should also give support to the civil society organizations which ensure that children's rights are not violated.

Finally, let the Government come up with strict rules and severe punishment for those who violate children's rights, irrespective of what kind of crime somebody has committed; a crime is a crime. I want to thank the Commissioners and Prof. Ojienda who is here. By the time the ICJ was training us for three years, we knew Prof. Ojienda was there. It is good that I have met him today. If he goes back, we would like him to give Mr. George Kegoro, our Executive Director---

The Presiding Chair (Commissioner Ojienda): I will ensure that I tell George that I met Mr. Kasina and he made good presentations before us. Thank you very much.

Mr. Josphat Manasseh Kasina: I want to present my handouts to him for reference.

Mr. Patrick Njue: When you say you want to give the documents formally are these the copies that you had earlier handed to me as you began your presentation? I take it that it is your wish that these be formally admitted into the records of this Commission.

The Presiding Chair (Commissioner Ojienda): It is so directed.

Mr. Patrick Njue: Mr. Kasina, in your introduction, you talked of being a VCO. For completeness of the record, what does VCO stand for?

Mr. Josphat Manasseh Kasina: VCO stands for Voluntary Children Officer.

Mr. Patrick Njue: Talking of the police stations here in Kitui, do you have a children's desk?

Mr. Josphat Manasseh Kasina: Yes, we have a children's desk.

Mr. Patrick Njue: That would mean that issues that have to do with the violation of children's rights are properly attended to whenever they are taken to the police station?

Mr. Josphat Manasseh Kasina: Yes. That is why I have said the police and other departments are doing very good work.

Mr. Patrick Njue: I have no further questions to ask you, just to thank you, again, for coming before this Commission to talk on behalf of children. As a person who works for them, it is something good that you are doing to ensure that the best interests of the children of Kitui are well looked into. Thank you for your presentation. The Commissioners may ask questions.

Commissioner Shava: Mr. Kasina, I have no questions for you. Just to make a comment on one of your recommendations which is to have separate remand facilities for children. The law actually does already provide that minors should not be incarcerated or remanded together with adults. But as you have pointed out, it still happens. So, that brings out the necessity for different Government departments and agencies to work together. We hope that the kind of reforms we are seeing now in the Judiciary and within the police department will see this law actually working for the benefit of children. So, we thank you for pointing that out from your personal experience.

Mr. Josphat Manasseh Kasina: I am also concerned with the police reforms.

The Presiding Chair (Commissioner Ojienda): Thank you, Mr. Kasina. You have struck a blow for children and reminded us of the implementation of international, regional and even other conventions. Even the Constitution and the Children's Act cannot be undertaken without activism from people like you.

As you have said, in spite of the fact that offences like the mutilation of children are clearly set out in Section 17 of the Children's Act, and in spite of the fact that early marriages and other sexual offences are clearly offences under the law, however, these ills continue in society. I think that without organizations such as yours and without trained paralegals, the implementation of the Children's Act cannot be complete. This is because at the grassroots level, the public is not aware of the existence of certain laws and even to a lesser extent, the existence of international law. The ICJ has played a fundamental role in activism and I want to thank them. I also want to thank the Law Society of Kenya. I also want to thank FIDA and other organizations like Clan and Cradle for standing up for children's rights.

I hope that in Kitui parents will know that every little child deserves an education and parental care under the law. Trafficking is an offence and children of tender age or below 18 years should not be trafficked or sent away as labourers or maids to cities or sold. I just want to thank you for that.

Leader of Evidence, call the last witness.

Mr. Patrick Njue: Our next witness is No.6 on the list.

(Mr. Francis Mutia Munyilu took the oath)

Mr. Patrick Njue: Kindly, for the record, do once again tell us your name, where you come from and what you do for a living.

Mr. Francis Mutia Munyilu: My name is Francis Mutia Munyilu. I come from Kitui Central, Kisasi District. I am a retired officer. I used to work with Customs Department, which is now called Kenya Revenue Authority (KRA).

Mr. Patrick Njue: You are here with us to share a violation on land. You bought land as Kilivi Self-Help Group, which land to date, according to your statement, you have not gotten. Is that the case?

Mr. Francis Mutia Munyilu: Yes. That land was bought by my father who passed away in 2009. By that time, I was working. When I heard that the Kitui County Council was selling land in Makini, I decided to buy it. My father heard through a councilor that that land was being sold. He notified me and I decided to buy it.

The group comprised about 40 people from Kilivi Village. These were the elderly people in the village who got together to buy the piece of land through our councilor. I also gave out my money so that we could buy our piece of land. I also bought for my father. I was

allocated five acres and my father five acres besides what was for the self help group. What surprises me is that since then, that was in 1993, we went like that then I asked my father what was going on. He later told me that they had issues with the council. But I did not know the issues of the council. Since he was old, we went to the chairman. We brought our group together with other groups from Kitui as a whole. We joined together and formed another group and registered as members.

The Presiding Chair (Commissioner Ojienda): Do you have documents that were given to you that show that there was a transaction between your father, the councilor and Kitui County Council? Let us start from there.

Mr. Francis Mutia Munyilu: Yes, I have the documents here. I presented photocopies when Mr. Tobiko came.

The Presiding Chair (Commissioner Ojienda): We want to see them. Could you, please, pass the originals to us? We will make copies. We want to help you. We have seen what has happened in Syokimau in the last few weeks and we want to help you without going into all the stories.

Mr. Francis Mutia Munyilu: So, these are the minutes of the County Council meeting where they met and decided to sub-divide that piece of land, Makini Mbuyu, and sell it to the public. This is the Kilivi one. These ones are mine, but this one is for the Kilivi Self Help Group, which was for elderly people. This is the receipt that we were issued with after we paid the deposit. I did not give this one out because it was not there at that time. It was somewhere else. The treasurer was an old man, so I managed to get this from the chairman. When Mr. Paulo was here I did not manage to give him these documents but I gave him copies of all these together with the others.

I would like to present this to you, so that it can be together with the other documents.

Mr. Patrick Njue: As the witness has said, there are documents which he had earlier given to us which are in our files. So, together with the additional documents, we pray that they be admitted as part of the record of this Commission. We will run copies of the originals and return them to him.

The Presiding Chair (Commissioner Ojienda): It is so directed. May we have a look at the documents?

Mr. Patrick Njue: Mr. Munyilu, when Kilivi bought the land, how much did they buy it for?

Mr. Francis Mutia Munyilu: We were asked for a deposit. Kilivi bought 10 acres and they were required to pay a deposit for that. They gave a deposit of Ksh4, 000 the receipts of which I have just handed over. For my acres on my side together with my father's five acres each, each acre required a deposit of Ksh2, 000. For the rest, we were told that we would pay the money later. Later we heard that the County Council had

already given out the piece of land because of meddling and politics and things I did not understand. I just heard that other people had already occupied the piece of land and they had been issued with title deeds yet we were waiting with allotment letters in order to pay the rest of the money. I am not even sure whether my father paid the rest of the money or did not because he died. These are documents I managed to get. So, when I heard that this Commission was coming over, I went to look for the chairman who is still alive. I called him and we went to meet your officer at the district in Kisasi so that we could know where justice is. I wanted my five acres first because my father had nine children and I am the first born. He stopped working in 1968 when I was in Form One. My intention had been to move out first and this was not possible.

Mr. Patrick Njue: You say that up to date you do not know whether more money was paid after paying the deposit?

Mr. Francis Mutia Munyilu: I do not know because I got the deposit from the chairman. I found the copies of the allotment letter in my late father's box. I was actually looking for the numbers to come and get the title deed for the other farms. That is when I came across this. So, I am not even sure whether he paid the rest of the money or he did not pay. I am not sure.

Mr. Patrick Njue: Ever since, have you tried to follow up this issue with the county council with a view to either completing payments so that you can have your land or seeking a refund of the money you had paid?

Mr. Francis Mutia Munyilu: At first when I came across the documents and before I heard that the Commission was here, when I went to the officer who was taking statements, I spoke to the chairman and he said that they got together with the other groups that bought the parcel of land. When this delayed, they got together and hired a lawyer in order to find out what was happening. He directed me to the old man who was the chairman of all the groups that had come together to buy the land. I went to see him. He is called Mr. Muthui. I spoke to him on the same day I spoke to Mr. Paul Tobiko. Before I got to Tobiko, I told him that I gave my money, but my father is the one who joined the group to buy this piece of land and he was the treasurer. He has since passed on. We decided to go to the chairman of that group. So, we went to Mr. Muthui, who helped us to go into the history of that farm. He is the one who gave us these copies from the council, the court ruling and the lawyer. He helped us to get to know exactly what transpired. He explained that politicians had meddled with the matter together with the officials of the council. They made it to appear as if the squatters had been assisted. I think it was just a way of denying us our rights. I am not happy because the little place that I have for subsistence is not enough.

When I heard that the case was in court, there was not much that I could do. But I got the letter from Mr. Muthui and I had already reported to you. I thought I should come and explain to you exactly what transpired. We are stuck. This court case has gone on for 18 years, from 1993. There seems not to be a way out. Some of the elderly people who are in the list that I managed to get have died. Is that not an injustice?

Mr. Patrick Njue: From the documents that you gave us, it seems that the case was filed in 2005. Did I hear you right when you said that it is still pending in court to date since 2005?

Mr. Francis Mutia Munyilu: I have not heard any new development. When I passed by the chairman's place, he told me the case is still pending in court. They are waiting for all of us to die.

Mr. Patrick Njue: I guess the Commissioners might have questions for you. Our Presiding Chair is a legal expert on land matters. He has looked at the document and he will have some sound advice for you. Thank you for coming and sharing that information with us.

The Presiding Chair (Commissioner Ojienda): I want to thank Francis for his testimony. I have, indeed, looked at the documents that you have given us. I just want to note sadly that, and as you are aware, Leader of Evidence, under the old Constitution the land within the jurisdiction of Kitui County Council would fall within the classification of Trust Land. If you wanted to look at how trust lands were dealt with, if you go to Section 115 of the old Constitution, the county councils would actually apply for what we call 'setting apart' to get land for setting up facilities and would also have power of a trust land within their region for allotments to inhabitants of the particular area.

So, Mr. Francis here and his father through the Kilivi Self Help Group applied for allotment to the county council of Kitui. The County Council of Kitui seems to have written through the Clerk Mr. D.M. Nthali confirming the allotment of a parcel referred to as Parcel No.124 and to Munyilo Wambua--- There are two parcels of land here; 379 and 370 of five acres, the one he is talking about. The allotment letters are signed and there is some evidence that is reflected, so that clearly Kitui County Council bound itself to give land to Mr. Munyilu and to this self help group. As was evident in the past, it was a common occurrence everywhere. There were two systems through which title deeds would be issued. A number of people would get their title deeds directly from the Ministry of Lands, Nairobi and other people would follow the process of the county council. This regime of registration resided in the land registry in the districts. That is the registration regime under the Registered Land Act, Cap.300, Laws of Kenya.

So, unfortunately, it appears some people must have run ahead of Munyilu and others and obtained title deeds. The problem with the law is that when the first title deed is obtained, irrespective of how it was obtained, it is protected by the law. It is that provision of the law, specifically the provision under Section 27 of the Registered Land Act, many so-called land grabbers took advantage of to secure title deeds. Unfortunately, those title deeds will be valid. The first registered title deeds will not even be canceled by the court. It is very unfortunate. It is, probably, why we have had to have law reforms.

The new Constitution says that if a title is illegal then that title can be canceled. You are protected by the law.

I think you can take that advantage and I will get over this first. Unfortunately, for Mr. Munyilu, there are no fast solutions to this kind of problem. He has two options: One, to look for a lawyer to pursue this case because the easier way would be to seek a refund from the Kitui County Council. But I think, public responsibility demands that the council explains to the Commission what happened and why. If they had indeed allocated land to you, why would they have turned round and interfered with the process and allowed another person to secure a title deed over the same parcel of land? I think it is that breach of public duty and the issues that have seen the mismanagement of the process of allotment which we need to understand as a commission. The county council of Kitui must answer to how these issues were managed. This is what is called land grabbing, and it cannot be tolerated! I think we shall give appropriate recommendations on this matter.

I think my colleagues have something to add. It seems they do not have.

Mr. Munyilu, I want to thank you and assure you that I will write a line on this and we will seek answers to all these issues you have raised. You seem to have a word to add?

Mr. Francis Mutia Munyilu: I want to add that we were told that that piece of land was being sold. To us it involved many groups in Kitui called Makinduyu. And, all the documents that you are seeing there, some of them are council minutes when they declared their intention to sell that piece of land, and that is from the advocate.

The groups came together and hired a lawyer and, on 30th of April, 2010, the case was heard at Machakos. What we do not understand is what is going on until now. How long should we wait for the High Court to make a decision? We will all perish before any decision is made! What annoys me is that there must have been a deliberate plan to defraud innocent citizens. They wanted to get the money, use it for their own purposes and as deposits, then they bring in their friends to take over that piece of land. That is why I advised my people to quickly acquire titles deeds. I know it has been a matter of talking and yet we have been waiting for 18 years. Is that justices?

The Presiding Chair (Commissioner Ojienda): Could you, please, give us details of the case; also the contact of the advocate so that we can know and make a follow up on it?

Mr. Mutia Munyilu: I have given all that information. Thank you.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Mr. Munyilu. I think your issues are straight forward and we will deal with them. I am sure there will be a solution to that.

Land grabbing as I told you is a deliberate part of the mandate of this Commission and we will not hesitate to make recommendations that will restore your land to you. In the new dispensation, as I mentioned, Chapter Five of the Constitution of Kenya has re-defined the manner in which land is dealt with. What is now classified as community land

is giving power to community members like you to make decisions over how that land should be appropriated so that we no longer have trust lands in the new dispensation. We have public land, private and community land. It is you who will have a voice in saying what you want with land that belongs to the Kitui Community.

Thank you very much. Leader of Evidence, bring in the next witness.

Mr. Patrick Mureithi Njue: Presiding Chair and Commissioners, that is all we had for the public hearings from witnesses today. Allow me to observe that we have received statements indeed from other members of the public who were here about cases, even detailing snake bites which is a problem in the larger Mwingi District.

I thought I should mention that to the public, specifically, so that they can continue giving their statements which will be looked into once the Commission goes back to Nairobi.

Thank you.

The Presiding Chair (Commissioner Ojienda): Thank you, Leader of Evidence. I would like to ask that those who are presiding should give direction.

We will take a break for one hour and, because we will be having women's hearings tomorrow morning in this Hall and we have other issues to attend to in the afternoon, the public should be directed accordingly.

But before the public is directed, I want to thank the following: Patricia Mwikali Mwalili, Bernard Mutungi, Benedict Mwendwa, Joseph Kasina and Francis Munyilu for finding time to come and testify before this Commission and share with all of us their experiences.

I want to thank all of you.

May I pass the button to Medline Murumba.

Please, proceed, Ms. Murumba.

Ms. Medline Murumba: Thank you, Presiding Chair. I promise to follow up as expected. Without contradicting the presiding Chair, I want to ask Commissioners' permission that the women forum will be held at the Parkside Villa Hotel and not here.

Therefore, for those ladies who are here, tomorrow we will go to Parkside Villa Hotel for the women's meeting.

I think we are through. We will close this session with a word prayer from our woman leader.

(The Commission adjourned at 1.40 p.m. with a word of prayer)

